

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 94-304-W - ORDER NO. 95-1635 ✓
OCTOBER 30, 1995

IN RE: Application of Upstate Heater Utilities,) ORDER
Inc. for Approval of an Increase in its) DENYING
Water Rates and Charges.) REHEARING AND
) RECONSIDERATION
)

This matter comes before the Public Service Commission of South Carolina (the Commission) on Petition of Upstate Heater Utilities, Inc. (Upstate or the Company) for Rehearing and Reconsideration of Order No. 95-1491. For the reasons stated below, this Petition must be denied.

Upstate alleges as its first statement of error that the Commission erred by failing to set a reasonable operating margin or return on rate base. Upstate notes that the matter was remanded by Order of the Honorable Thomas Hughston, and among other findings, Hughston noted that the Company presented uncontested testimony as to the appropriate return to be granted.

Company President William Grantmyre testified during the case that a 13.6% operating margin had been held to be appropriate. In this case, Upstate has stated that it is seeking a much lower margin in order to minimize the impact on customers. As Upstate states, the proposed rate increase in the case would produce a 10.42% operating margin. Judge Hughston's finding of fact notes

that the 10.42% is within the range of rate of return initially presented to the Commission as just and reasonable. Upstate goes on to state that the increase granted by the Commission is not within the range as approved by the Circuit Court.

It should be noted that Judge Hughston merely stated one operating margin that was reasonable. Nowhere did Judge Hughston forestall the Commission from finding a different operating margin, properly calculated, based upon the evidence in the case.

Upstate notes that without any supporting evidence, the Commission set an operating margin of 1.19%, and that this was unacceptable.

Clearly, the Commission had evidence upon which to base its conclusions, and ultimately, the operating margin in this case. In discussion of the 1.19% operating margin found by the Commission, the Commission noted that it was mindful of the standards delineated in the case of Bluefield Waterworks and Improvement Company v. Public Service Commission of West Virginia, 262 U.S. 679 (1923), and of the balance between the respective interests of the Company and the consumer. The Order went on to state that the Commission had considered the spectrum of relevant factors in the proceedings, the revenue requirements for the Company, the proposed price for which the Company's service is rendered, the quality of that service, and the effect of the proposal upon the consumer, among others. See Order No. 95-1491 at 9.

Further, the operating margin is a matter peculiarly within the jurisdiction and discretion of the Public Service Commission.

See Patton v. South Carolina Public Service Commission, 280 S.C. 288, 312 S.E.2d 257 (1984). The 1.19% operating margin was appropriate based on the evidence contained in the record of this case.

Second, Upstate alleges error and states that the Commission erred in denying the requested rate increase in a service area of approximately 1,200 customers based upon the testimony of only 19 customers at a public hearing. Upstate then quotes Findings of Fact No. 8 in Judge Hughston's July 31, 1995 Circuit Court Order which states that:

The Commission unduly penalized Heater by denying the rate increase in all service areas based upon the testimony of only 19 customers. Where there is absolutely no evidence to support a finding of low quality service in all of the service areas.

As has been stated above, the quality of service was mentioned as a factor in Order No. 95-1491, however, this was only one factor upon which the Commission based its decision. The testimony at the public hearing as to quality of water is nowhere mentioned in Commission Order No. 95-1491. Therefore, to say that the entire Order was based on the testimony of 19 customers at a public hearing is erroneous, given the detailed reasoning laid out by the Commission concerning matters other than the quality of service. This allegation of error is simply erroneous, and does not comport with the language stated in our Order No. 95-1491.

Next, Heater states the Commission abused its discretion in setting an operating margin which has no evidentiary basis in the record.

Again, the Commission's reasoning in Order No. 95-1491 was clear. The factors upon which the Commission based its operating margin were clearly laid out for the Applicant, and for the reviewing Court to review. The Company states that the Commission should have utilized rate base methodology as opposed to the operating margin, and that it would have required the Commission to set rates with "appropriate consideration to a legitimate investment which is dedicated to the public use." Upstate states that the use of the operating margin methodology in this case is not supported by substantial evidence.

It should be noted that under the case of Nucor Steel v. The Public Service Commission, ___S.C.___, 439 S.E.2d 210 (1994), the Commission is not wedded to any one methodology in deciding its rate cases. The Commission may use its discretion to pick the appropriate method. We would also note that S.C. Code Ann. §58-5-240(H) requires that the Commission include an operating margin in all water and wastewater Orders.

Upstate states that "In an attempt to forestall political ramifications, the Commission "blindly views" the evidence of private utility companies in order to prevent a reasonable increase in rates for the customers of the water and sewer utilities."

No such political ramifications are contained in the record of this case. The Commission is entitled to wide discretion in arriving at its rate decisions. See Wild Dunes Utilities, Inc. and Carolina Water Service, Inc. cases.

Finally, Upstate states that the Commission failed to follow

the clear dictates of Judge Hughston's Order. Clearly, the Commission has approved rates which it has found in its discretion to be just and reasonable, and which have evidentiary support in the record. The Judge clearly mandated such a result which the Commission has followed.

Based on all of the matters as stated above, the Petition for Rehearing and Reconsideration of Order No. 95-1491 must be denied.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)